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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,645	04/21/2004	Joey Martin Wiggins	17600-55098	5346
44692	7590	04/27/2005	EXAMINER	
<b>WRIGHT, LINDSEY &amp; JENNINGS LLP</b> 200 WEST CAPITOL AVENUE, SUITE 2300 LITTLE ROCK, AR 72201-3699				CARTER, MONICA SMITH
		ART UNIT		PAPER NUMBER
				3722

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/828,645	WIGGINS, JOEY MARTIN	
	<b>Examiner</b> Monica S. Carter	<b>Art Unit</b> 3722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 December 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snowden ('057) in view of Berman et al. ('550).

Snowden discloses suspended filing folders comprising at least one flexible index tab (20) having flexible lugs (18) for insertion into the spaced vertical slots (17), the flexible index tab having a space for receiving a label (as seen in figure 4).

Snowden discloses the claimed invention except for providing at least one pad comprising a plurality of labels in the space of the index tab.

Berman discloses a note pad (10) comprising a plurality of labels (12, 14, 16), each of the labels comprising a sheet having an upper surface for entering information (see column 3, lines 44-49) and a lower surface coated with a releasable adhesive (18)(see figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Snowden's invention by replacing the label of Snowden with a notepad having a plurality of labels, as taught by Berman, to provide the indexing system with a plurality of labels for including additional information in the index tab.

Regarding claim 2, Snowden, as modified by Berman, discloses the pad comprising at least three labels (12, 14, 16 of Berman).

Regarding claim 3, Snowden, as modified by Berman, discloses the lower surface of the labels comprising a non-adhesive portion (as seen in figure 1 of Berman).

Regarding claim 4, Snowden, as modified by Berman, discloses the flexible index tab comprising a single sheet of flexible material (see column 3, lines 32-36 of Snowden).

Regarding claim 5, Snowden, as modified by Berman, discloses the index tab labeling system as set forth in the above rejections to claims 1 and 2.

Regarding claim 6, Snowden, as modified by Berman, discloses the lower surface of the labels comprising a non-adhesive portion (as seen in figure 1 of Berman).

Regarding claim 7, see the above rejections to claims 1, 2 and 3.

### ***Response to Arguments***

3. Applicant's arguments filed December 6, 2004 have been fully considered but they are not persuasive.

Applicant argues that Berman et al. fail to disclose the notepad comprising a plurality of labels and does not teach any specific use of his notepad for any purpose other than taking notes. Applicant further argues that the term used in Berman is "sheets" instead of labels.

The examiner asserts that the term "label" is defined to mean:

An item that functions as a means of identification, especially a small piece of paper or cloth attached to an article to designate its origin, owner, contents, use, or destination.<sup>1</sup>

The examiner asserts that the paper sheets of Berman et al. function as a means of identification, since the intent of the invention is to receive indicia ("A readable symbol is next produced on the top sheet of the article") and carry releasable adhesive on the rear surface of the sheet for attaching the sheet to a surface. Applicant discloses the invention comprising a pad 30 of labels 31 comprising an upper surface 32 adapted to receive index information and a lower surface 33 having a layer 34 of releasable adhesive (see [0016] on page 4 of the Specification]). Therefore, Berman's pad of paper sheets are disclosed as having the same structure as disclosed in the presently claimed invention.

Applicant argues that the examiner has not identified any teaching in the prior art to suggest the desirability of combining a notepad with an index tab. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958

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F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Snowden discloses suspended file folders having index tabs including an area for receiving labels; however, Snowden does not explicitly disclose providing a pad of labels inserted into the tab slot. Berman et al. disclose a pad of sheets of paper labels for receiving identifying information. It would have been obvious to replace the labels received in the tab slot of Snowden with the pad of labels, as taught by Berman, to provide the user with additional labels that may be attached to various surfaces.

In response to applicant's argument that Snowden and Berman fail to identify the problem presented in the invention, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's argument that Berman is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention.

See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Berman et al. function as a means of identification, since the intent of the invention is to receive indicia ("A readable symbol is next produced on the top sheet of the article") and carry releasable adhesive on the rear surface of the sheet for attaching the sheet to a surface. Applicant discloses the invention comprising a pad 30 of labels 31 comprising an upper surface 32 adapted to receive index information and a lower surface 33 having

a layer 34 of releasable adhesive (see [0016] on page 4 of the Specification). Therefore, Berman's pad of paper sheets are disclosed as having the same structure as disclosed in the presently claimed invention.

For the reasons as set forth above, the rejections are maintained.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica S. Carter whose telephone number is (571) 272-4475. The examiner can normally be reached on Monday-Thursday (6:00 AM - 3:30 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 25, 2005

*Monica S. Carter*  
MONICA S. CARTER  
PRIMARY EXAMINER